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C.R.P.(PD)No.2932 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.2932 of 2023

and

C.M.P.No.18126 of 2023

V.Nagarajan

.. Petitioner

Vs.

1.U.Yuvaraj

2.U.Vasanthalakshmi

.. Respondents

Prayer : The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order, dated 07.03.2023, passed in I.A.No.1772 of 2018 in O.S.No.232 of 2018 on the file of the learned II Additional District and Sessions Judge at Tiruppur.

For Petitioner : Mr.M.Santhanaraman

For Respondents : Mr.S.Mukunth

Senior Counsel for Mr.P.Tamilavel

ORDER

The present Civil Revision Petition arises as against an order passed by the learned II Additional District and Sessions Judge at Tiruppur in I.A.No.1772 of 2018 in O.S.No.232 of 2018 dated 07.03.2023.



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2. For the sake of convenience, the parties will be referred to as per their rank in the suit.

3. O.S.No.232 of 2018 is a suit for declaration that the sale deeds executed by the plaintiff in favour of the defendants on the following dates :

(1) 13.04.2009 in document No.3766 of 2009

(2) 13.04.2009 in document No.3767 of 2009

(3) 13.04.2009 in document No.3768 of 2009

(4) 13.04.2009 in document No.3769 of 2009

(5) 20.04.2009 in document No.1259 of 2009

(6) 06.06.2017 in document No.7568 of 2017

(7) 19.03.2014 in document No.3003 of 2014 are null and void

and for directing the 6th defendant to repay a sum of Rs.2,98,050/- which had been transferred from the salary account of the 1st plaintiff in favour of the defendants, and to direct the transfer of car bearing registration No.TN 30 M 3993 or to pay the costs of the Vehicle of Rs.4,50,000/-.

4. The case of the 1st plaintiff is that he was an employee in the



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company owned by the 1st defendant from 01.01.1986 to 28.03.2009. He would allege that on 27.03.2009, the 1st defendant and his brother P.Ashokaraman had threatened the 1st plaintiff with dire consequences stating that he had misappropriated a sum of Rs.40,00,000/- from the Company, and obtained a concession letter under coercion. Since the 1st defendant is rich and powerful, with great influence in the police department, the 1st plaintiff was scared that he will be put behind bars. Therefore, on 27.03.2009, he signed (i) 3 empty Rs.50/- Non – Judicial Stamp papers and 3 empty promissory notes, (ii) cheques bearing cheque Nos.30557, 30558 and 30559 drawn on State Bank of Mysore, Avinashi Branch and another cheque bearing cheque No.30560 issued by the Indian Overseas Bank to the 1st defendant and title deeds for his properties to the first defendant. The 1st plaintiff, being a lower level purchase executive, was scared to go to Jail, and in order to protect his reputation, he handed over the aforesaid documents.

5. He would allege that the properties were transferred in favour of defendant Nos.2 to 6, who are all the Benamidars of the 1st defendant. He would further allege that a Maruti Esteem car bearing registration No.TN 30



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M 3993, which the 1st plaintiff had purchased, was illegally transferred in favour of the 6th defendant. He would plead that he had appeared before the Sub Registrar at Avinashi along with his wife, who is the 2nd plaintiff, and executed the documents in favour of the purchasers. He would also allege that the 6th defendant had utilized the cheques issued by him to the 1st defendant and withdrew various sums of money totally amounting to a sum of Rs.2,98,050/-. He would state that he had approached the Superintendent of Police, Avinashi Police Station, and the Anti-land Grabbing Cell, Tiruppur as well as the Chief Minister's Special Cell by way of a complaint on 27.08.2010. Pending these complaints, a criminal proceeding was launched against him by one Sundara Vadivel, who is the then Senior Manager of SP Apparels Limited, Avinashi. As this case was pending, he was not in a position to present the suit for a period of seven years. He was subsequently acquitted. He would state that this seven year period has to be excluded on account of the fact that he was under fear and threat, and since he has suffered trauma from the criminal complaint.

6. On acquittal on 09.10.2018, the 1st plaintiff came forward with the suit. He would plead that the suit is on time, since the acquittal was passed



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only on 19.03.2018 clearing his name. Hence, he immediately came forward with the suit for the aforesaid reliefs.

7. On being served with the summons, the 2nd defendant alone filed an application for rejection of plaint. He pleaded that the property had been purchased by him, since the plaintiff wanted to leave Avinashi after alienation of the property. He would state that he is not a Benamidar of the 1st plaintiff. His sole point on the rejection of plaint is based on Article 58 of the Limitation Act. According to him, the suit ought to have been presented within three years from the date of registration of the document, and since it had been filed thereafter, the suit is barred by time.

8. The learned trial Judge came to the conclusion that the limitation being mixed questions of law and fact, it has to be tried only at the time of final disposal and hence, dismissed the petition. Against which, the present Civil Revision Petition.

9. Heard Mr.M.Santhanaraman, appearing on behalf of the civil revision petitioner and Mr.S.Mukunth, Senior Counsel for Mr.P.Tamilavel,



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appearing on behalf of the respondents.

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10. Insofar as the plea of limitation is concerned, the averments made in the plaint alone should save the plaint. I am not concerned with the defence that was raised by the defendants whether they are the Benamidars or whether the plaintiff wanted to sell the property and leave Avinashi once and for all. It is the duty of the 1st plaintiff, under Order VI Rule 4 of the Code of Civil Procedure, to specifically state the circumstances under which he was under undue influence, coercion, etc.

11. A reading of the plaint itself discloses that the 1st plaintiff immediately sought recourse from the police in the year 2010. Therefore, the plaint concedes to the fact that whatever fear existed in the mind of the 1st plaintiff on the date of execution of the sale deed vanished, and he was in a perfectly sane condition to lodge a complaint on 27.08.2010.

12. Apart from that, the 2nd plaintiff, who also joined the plaintiff in execution of the document, nowhere pleads that she was suffering from any violating circumstances like undue influence, coercion or misrepresentation



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etc. If a suit is barred against one plaintiff, it cannot be said to be in time as against the other. The plaint is deliciously vague, infact, it is totally silent with respect to the pleading as to what happened to the 2nd plaintiff from the date of execution of the sale deed till the date of presentation of the plaint.

13. A reading of the plaint also discloses that the 1st plaintiff had defended himself in C.C.No.148 of 2011 on the file of the Judicial Magistrate Court at Avinashi, and between the period from the year 2011 to 2017, he had actively defended himself before the Courts at Avinashi. It is only clever drafting that the 1st plaintiff was under the threat of the 1st defendant that prevented him to approach the Civil Court. This threat did not exist when he had to appear before the Criminal Court. Selective fear in appearing before the Courts is unknown to natural human conduct.

14. Insofar as the period of limitation is concerned, under Article 58 of the Limitation Act, though pleaded by Mr.M.Santhanaraman, would not apply to the facts of the present case. The suit is to set aside an instrument and the period of limitation under Article 59 of the said Act is on the facts



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entitling the instrument to be cancelled based on when it first came to the knowledge of the 1st plaintiff.

15. The fact that there was threat and coercion, came to the knowledge of the plaintiff on 27.08.2010, from reading of the plaint. Even if I were to exclude the period from 13.04.2009 till 27.08.2010, the presentation of the plaint in the year 2018 is hopelessly hit by Article 59 of the Limitation Act. The 1st plaintiff knew the facts on the date of execution of the sale deed, and he had three year time to approach the Court. He obviously did not approach the Court, because a criminal case was pending alleging misappropriation by him of the assets belonging to the Company owned by the 1st defendant. He waited till his name was cleared from the criminal proceeding and thereafter, has approached the Court. This acquittal in the criminal case does not extend the period of limitation which had gone by in the year 2012.

16. Therefore, without giving any consideration to the pleas raised by the Mr.M.Santhanaraman regarding misappropriation, and that the 2nd defendant is not a Benamidar of the 1st defendant, on bare reading of the



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plaint, I am able to see that the 1st plaintiff has adopted adroit drafting to get over the period of limitation. Such complaints should not remain on the file of the Court. As a dead and a stale issue should not be investigated by the civil Court wasting its precious judicial time. Consequently, the Civil Revision Petition stands allowed.

17. The order passed by the learned II Additional District and Sessions Judge, Tiruppur in I.A.No.1772 of 2018 in O.S.No.232 of 2018, dated 07.03.2023, is set aside. I.A.No.1772 of 2018 shall stand allowed and the plaint in O.S.No.232 of 2018 shall stand rejected as it has been barred by time. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

07.08.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No



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V. LAKSHMINARAYANAN, J.

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To

The learned II Additional District and Sessions Judge,
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